



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0341; FRL-10024-59-Region 9]

Severe Area Submission Requirements for the 2008 Ozone NAAQS; California; Eastern Kern Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In the Rules and Regulations section of this *Federal Register*, the Environmental Protection Agency (EPA) is granting a request by the California Air Resources Board (CARB or “State”) to voluntarily reclassify the Eastern Kern nonattainment area (“Eastern Kern”) from “Serious” to “Severe” for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) under section 181(b)(3) of the Clean Air Act (CAA). In this action, the EPA is proposing a schedule for the State to submit revisions to the state implementation plan (SIP) addressing Severe area requirements and to submit revisions to the title V operating permit rules for this area. Under the EPA’s proposed schedule, California would be required to submit SIP revisions addressing Severe area requirements for Eastern Kern, including revisions to New Source Review (NSR) rules, no later than 18 months from the effective date of the EPA’s final rule reclassifying Eastern Kern to Severe. Submittal of any corresponding revisions to the title V rules that apply in Eastern Kern would be due within six months of the effective date of the reclassification. Lastly, the EPA is proposing a deadline for implementation of new Reasonably Available Control Technology (RACT) rules as expeditiously as practicable but no later than 18 months from the date when the Severe area RACT SIP will be due.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0341 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online

instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ben Leers, Air Planning Office (AIR-2), EPA Region IX, (415) 947-4279, Leers.Benjamin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Background

In March 2008, the EPA strengthened the primary and secondary eight-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm (“2008 ozone NAAQS”).¹ In accordance with section 107(d) of the CAA, the EPA must designate an area “nonattainment” if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area. With respect to the ozone NAAQS, the EPA further classifies nonattainment areas as “Marginal,” “Moderate,” “Serious,” “Severe,”² or “Extreme,” depending upon the ozone design value for an area.³ See CAA section 181(a)(1). As a general matter, higher classified ozone nonattainment areas are subject to a greater number of, and more stringent, CAA planning requirements than lower classified areas but are allowed more time to attain the ozone NAAQS. See, generally, subpart 2 of part D of title I of the CAA.

Effective July 20, 2012, the EPA designated and classified the Eastern Kern area⁴ under the CAA as Marginal nonattainment for the 2008 8-hour ozone NAAQS.⁵ EPA’s classification of Eastern Kern as a Marginal ozone nonattainment area established a requirement that the area attain the 2008 ozone NAAQS as expeditiously as practicable, but no later than three years from the date of designation as nonattainment, i.e., July 20, 2015. Under CAA section 181(b)(2), the EPA is required to determine whether an area attained the ozone NAAQS by the applicable attainment date. In May 2016, the EPA found that Eastern Kern failed to attain the 2008 ozone NAAQS by the July 20, 2015 Marginal attainment date and reclassified the area as Moderate for the 2008 ozone NAAQS with a new maximum attainment date of July 20, 2018.⁶

¹ 73 FR 16436 (March 27, 2008).

² Throughout this document, we use the term “Severe” to refer to Severe areas that have up to 15 years to attain the ozone standards. The ozone area designation tables in 40 CFR part 81 specify “Severe-15” to distinguish such areas from “Severe-17” areas, which are Severe areas that have up to 17 years to attain the ozone standards.

³ For the 2008 ozone NAAQS, the design value at each monitoring site is the annual fourth-highest daily maximum 8-hour average ozone concentration, averaged over three years. The design value for an area is the highest design value among the monitoring sites.

⁴ Kern County is located in the southern-most portion of California’s Central Valley. The western portion of Kern County is part of the San Joaquin Valley air basin and is included within the San Joaquin Valley ozone nonattainment area. The eastern portion of Kern County is part of the Mojave Desert air basin. The Eastern Kern ozone nonattainment area covers the eastern portion of the county excluding Indian Wells Valley. For more detail on the boundaries of the Eastern Kern ozone nonattainment area, see the 2008 ozone table in 40 CFR 81.305.

⁵ 77 FR 30088 (May 21, 2012).

⁶ 81 FR 26697 (May 4, 2016).

On October 25, 2017, CARB submitted the “Eastern Kern Air Pollution Control District 2017 Ozone Attainment Plan for the Federal 75 ppb 8-Hour Ozone Standard” (“the Eastern Kern 2017 Ozone Plan”), which included a request for voluntary reclassification of the Eastern Kern ozone nonattainment area from Moderate to Serious. Effective August 6, 2018, the EPA granted CARB’s request and reclassified the Eastern Kern ozone nonattainment area as Serious for the 2008 ozone NAAQS with a new maximum attainment date of July 20, 2021.⁷

By letter dated May 15, 2021, CARB submitted a request from the Eastern Kern Air Pollution Control District (“District”) to the EPA to voluntarily reclassify the Eastern Kern ozone nonattainment area from Serious to Severe for the 2008 8-hour ozone NAAQS.⁸ In the Rules and Regulations section of this *Federal Register*, the EPA is granting California’s request and reclassifying the Eastern Kern area from Serious to Severe nonattainment for the 2008 8-hour ozone NAAQS. In this action, we are proposing a schedule for the State to submit the plan elements for a Severe ozone nonattainment area.

II. Severe Area Requirements and Proposed Schedule

In this action, we are proposing to require the State to submit SIP revisions to address the requirements resulting from the EPA’s reclassification of Eastern Kern to Severe nonattainment for the 2008 ozone NAAQS by no later than 18 months from the effective date of the EPA’s final rule reclassifying Eastern Kern to Severe. Under this proposal, the State’s submittal(s) would need to include a Severe area plan that addresses the requirements of CAA section 182(d) as well as revisions to the NSR rules applicable to the area. We are also proposing a schedule for submittal of revised title V rules within six months of the effective date of the EPA’s final reclassification rule as explained in greater detail below.

A. Severe Area Plan Requirements

⁷ 83 FR 31334 (July 5, 2018).

⁸ Letter dated May 15, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region IX. In the letter, CARB also requests reclassification of Eastern Kern to Serious for the 2015 ozone NAAQS. The EPA will take action on the reclassification request with respect to the 2015 ozone NAAQS in a separate rulemaking.

CARB must submit SIP revisions for Eastern Kern that satisfy the general air quality planning requirements under CAA section 172(c) and specific requirements for Severe areas under CAA section 182(d), as interpreted and described in the final SIP Requirements Rule for the 2008 ozone NAAQS. See 40 CFR 51.1100 *et seq.*

For areas initially designated Severe, the CAA and the EPA's ozone SIP Requirements Rules (SRR) for the 2008 ozone NAAQS⁹ generally provide, depending on the element, up to four years from the date of designation to submit the required SIP elements to the EPA. The statutory deadline for all SIP submissions for areas initially designated as Severe for the 2008 ozone NAAQS was July 20, 2016 (excluding the CAA section 185 fee program). Because the deadlines for areas initially designated as Severe have passed (except for the CAA section 185 fee program), the EPA is invoking its general CAA section 301(a) authority to propose a new deadline of 18 months from the effective date of the final rule reclassifying Eastern Kern as Severe for the State to submit SIP revisions addressing the Severe area requirements for Eastern Kern.

For ozone areas reclassified by operation of law under CAA section 181(b)(2) from Moderate to Serious, we have generally established 12-month SIP submission deadlines.¹⁰ However, we find that an 18-month schedule for submittal of SIP revisions is appropriate for reclassifications from Serious to Severe given the longer interval to the maximum attainment date associated with areas reclassified to Severe as compared to areas reclassified to Serious. That is, the maximum attainment dates extend from six to nine years from the effective date of designation for areas reclassified from Moderate to Serious, but from nine to 15 years for areas reclassified from Serious to Severe.¹¹ Therefore, we find that providing a longer period for submittal of SIP revisions addressing Severe area requirements for Eastern Kern is appropriate

⁹ The EPA promulgated the SRR for the 2008 ozone NAAQS at 40 CFR part 52, subpart AA.

¹⁰ See, e.g., 75 FR 79302 (Dec. 20, 2010) (Dallas-Ft. Worth, Texas, reclassification to Serious for the 1997 8-hour ozone NAAQS); 69 FR 16483 (March 30, 2004) (Beaumont-Port Arthur, Texas, reclassification to Serious for the 1979 1-hour ozone NAAQS); 68 FR 4836 (Jan. 30, 2003) (St. Louis, Missouri, reclassification to Serious for the 1979 1-hour ozone NAAQS).

¹¹ 40 CFR 51.1103.

and allows CARB and the District to finish reviews of available control measures, adopt revisions to necessary control strategies, address other SIP requirements and complete the public notice process necessary to adopt and submit timely SIP revisions. Lastly, while the deadline for submittal of the CAA section 185 fee program for areas originally classified as Severe has not yet expired, we are proposing the same schedule for submittal of the CAA section 185 fee program for Eastern Kern as for the other Severe area SIP requirements to assure consistency among the required submissions.

With respect to implementation of new RACT controls in Eastern Kern, we are proposing that such controls be implemented as expeditiously as practicable, but no later than 18 months from the date when the Severe area RACT SIP will be due, i.e., 36 months from the effective date of the EPA's final rule reclassifying Eastern Kern to Severe (assuming we finalize the proposed 18-month schedule for submittal). We believe that such an implementation deadline appropriately balances the necessity of providing sources sufficient time to come into compliance with the new RACT controls while also ensuring that RACT controls are in place in time to provide for attainment consistent with the overarching goal of improving air quality as quickly as possible to improve public health outcomes.

B. NSR and Title V Program Revisions

In section II.A of this proposed rule, we are proposing a deadline of no later than 18 months from the effective date of EPA's final rule reclassifying Eastern Kern to Severe for submittal of revised District NSR rules as a SIP revision. The District NSR rules for Eastern Kern must be revised to reflect the Severe area definitions for new major sources and major modifications and to increase the offset ratios for these sources consistent with CAA section 182(d)(2). Under CAA section 182(d)(2), the volatile organic compound and oxides of nitrogen offset ratios for major sources and modifications in a Severe nonattainment area must be at least 1.3 to 1, or at least 1.2 to 1 if the plan requires all existing major sources in the nonattainment area to use best available control technology.

The District must also make any changes in its title V operating permits program for Eastern Kern necessary to reflect the change in the major source threshold from 50 tons per year for Serious areas to 25 tons per year for Severe areas. We are proposing a deadline of six months from the effective date of reclassification to Severe for the District to submit the required title V revisions. Given the narrow scope of the required revisions, we consider a deadline of six months from the effective date of reclassification as a sufficient period of time to allow the District to make the required changes without imposing a lengthy delay in the requirement for sources newly subject to the title V program to submit a timely application.¹²

C. Federal Reformulated Gasoline

The Clean Air Act requires that the sale of conventional gasoline be prohibited in any ozone nonattainment area that is reclassified as Severe, resulting in federal reformulated gasoline (RFG) being sold in any such area.¹³ The prohibition on the sale of conventional gasoline takes effect one year after the effective date of the reclassification to Severe. California law requires the sale of California Phase 3 RFG (CaRFG3) throughout the state, and the EPA has exempted gasoline fuel meeting the CaRFG3 regulations from the requirements that would otherwise apply under the federal RFG regulations.¹⁴ We issued this exemption because we found that gasoline complying with the CaRFG3 regulations provides emissions benefits equivalent to federal RFG regulations and because California's compliance and enforcement program is sufficiently rigorous to assure that the standards are met.¹⁵ Thus, reclassification of Eastern Kern to Severe does not impact the continued applicability of California's regulations that require the sale of CaRFG3 in the Eastern Kern area. Should California's regulations no longer apply in the future, the EPA's RFG regulations would apply in keeping with the CAA. In a separate action, the EPA would add Eastern Kern to the list of federal RFG covered areas in 40 CFR part 1090.

¹² A source newly subject to the title V permit program is required to submit a title V application within 12 months after the source becomes subject to the program. See 40 CFR 70.5(a)(1)(i).

¹³ See the definitions of "covered area," "conventional gasoline," and "reformulated gasoline" in CAA section 211(k)(10).

¹⁴ 40 CFR 1090.625. See also 85 FR 78412 at 78430, footnote 70 (December 4, 2020).

¹⁵ 70 FR 75914 (December 21, 2005).

III. Proposed Action and Request for Public Comment

For the reasons provided above, the EPA is proposing to establish a deadline of no later than 18 months from the effective date of the final rule reclassifying Eastern Kern as Severe for the State of California to submit SIP revisions addressing all Severe area SIP elements for the Eastern Kern ozone nonattainment area. We are proposing to establish a deadline of six months for any necessary revisions to the title V rules for the Eastern Kern area. The EPA is proposing a deadline for implementation of new RACT controls as expeditiously as practicable but no later than 18 months from the effective date of the date when the Severe area RACT SIP will be due, i.e., 36 months from the effective date of the EPA's final rule reclassifying Eastern Kern to Severe (assuming we finalize the proposed 18-month schedule for submittal). We will accept comments from the public on this proposed rule for the next 30 days. The deadline and instructions for submission of comments are provided in the **DATES** and **ADDRESSES** sections at the beginning of this preamble.

IV. Statutory and Executive Order Reviews

Under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, the timing of the submittal of the Severe area requirements does not impose a materially adverse impact under Executive Order 12866. For these reasons, this proposed action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

In addition, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and that this proposed rule does not contain any unfunded mandate or significantly or

uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), because the EPA is seeking comment solely on the timing of submittal requirements.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” There are no Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Eastern Kern ozone nonattainment area, and thus, this proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

This proposed action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This proposed action does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This proposed rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

As this proposal would set a deadline for the submittal of CAA required plans and information, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA believes that this action, which addresses the timing for the submittal of Severe area ozone planning requirements, does not have disproportionately high and adverse human health or environmental health effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: May 27, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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